

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
SEP 13 2 45 PM '04  
JAMES L. WAGNER

SENSITECH INC. and DONALD W.  
BERRIAN,

Plaintiffs,

vs.

TIME & TEMPERATURE COMPANY  
d/b/a TIME 'N TEMPERATURE  
CORPORATION

Defendant.

Case No. 04-11483MLW

DECLARATION OF DAVID VAUGHT  
IN OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS, OR, IN THE  
ALTERNATIVE, TO TRANSFER VENUE

**DECLARATION OF DAVID VAUGHT**

I, David Vaught, declare:

1. I am over the age of eighteen (18). I make this declaration of my own personal knowledge or on information and belief where so stated. If called as a witness, I could and would competently testify to the truth of the matters asserted herein.
2. I submit this declaration in support of Sensitech's Opposition to Defendant's Motion to Dismiss, or, in the Alternative, to Transfer Venue.
3. I am employed by Sensitech as its Sales Manager for, Supermarkets. I have held this position since August 22, 2000. Before that, I was employed by Ryan Instruments, another manufacturer of temperature monitor devices, as its Sales Manager.
4. As Sales Manager for Supermarkets, I am responsible for sales management of Sensitech's temperature monitoring products in the domestic and Canadian food industry.

5. Upon information and belief, TnT has made direct arrangements with receivers of perishable goods whereby the receivers require or request that grower/shippers use TnT's monitors on shipments to that receiver. TnT has entered a number of such programs with receivers across the country, including accounts in Massachusetts, as reflected on the attached list of SmartChek users TnT faxed to perishable goods suppliers on March 22, 2002. (Ex. A.) This list was located in my files at Sensitech. Upon information and belief Sensitech originally obtained this document some time ago when one of its field sales representatives obtained it from a produce supplier.

6. Upon information and belief, TnT sent "blast" faxes of this type to grower/shippers periodically to remind them to use SmartChek recorders on shipments headed for the receivers who made the affirmative decision to standardize their temperature monitoring programs on TnT products and services. This is reflected in the statement on the top of the list reading "Check this list for your customer's who request SmartChek digital recorders. Call 800-338-7295 to order." (Id.)

7. Also located in my files is an April 4, 2002 letter from TnT's Sales Manager Phil Tripoli to a receiver of perishable goods. (Ex. B.) This letter describes TnT's "SmartChek program" and identifies C&S Wholesale and Shaw's as among TnT's accounts.

8. Shaw's is a Supermarket chain based in Massachusetts.

9. Based on my own experience in making a sales call on C&S Wholesale for the purpose of proposing a program similar to the one established by TnT with that company I can confirm that the personnel at C&S Wholesale authorized to select a temperature monitoring vendor are located at the company's Hatfield, Massachusetts offices. (Ex. B, 1-2)

10. Note that the copy of this letter was forwarded to Sensitech's Calgary, Canada sales office from the recipient with all references to its name redacted, apparently because this contained information regarding a competitor of Sensitech. Sensitech does not have an unredacted copy of this letter.

11. In addition, in my files I located correspondence from TnT to a potential new receiver customer concerning a temperature monitoring program based on TnT's SmartCheck product. (Ex. C). This correspondence included a written document entitled "SmartCheck proposal" that outlined the terms of TnT's program and had spaces to be signed by TnT and the receiver. Based on information and belief I can confirm that the proposed terms of the potential business agreement with this receiver are generally consistent with the terms of similar business agreements offered to, and accepted by, other receivers throughout the U.S., including receivers in Massachusetts. (Ex. C, last page. )

12. I am based in Sensitech's Redmond, Washington location, which consists mainly of a manufacturing facility where mechanical stripechart monitors are made. I routinely travel to Massachusetts in connection with my job.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 20, 2004  
Redmond, Washington

A handwritten signature in black ink, appearing to read "David E. Vaught", written over a horizontal line.

David Vaught